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For 1873.

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(Designed especially for this Work)

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The Daily Press.

Hongkong, JUNE 20TH, 1873.

In yesterday's issue we gave a full report of the case of WILKINSON v. NORTON AND ANOTHER, with the view of making the matter as far as possible intelligible to the public. This case, however, is as much of a technical character, that it is somewhat difficult very clearly to note its real bearing; but as it involves considerations of undoubted public importance, we shall endeavour as accurately as possible to lay them before our readers.

The nature of the case was extremely simple, and will be easily understood when stated in ordinary commercial language. The plaintiff claimed \$17,000, which he alleged to be due to him as charter money on the steamer *Parana*, which defendants had chartered for a voyage to Australia and back. The defendants reply: "No; we do not owe you that money, because you promised to give us the use of a steamer which would go seven knots an hour, and the *Parana* did not go nearly so fast." This simple state of affairs, however, involved in a good deal of technicality before it came before the Court, as the answer made by the defendants left it open to conclude that they might wish to do what is known, in legal parlance, as pleading a set-off of unliquidated damages against the freight. What are termed unliquidated damages are to be popularly described as damages resultant from the breach of a contract which have to be assessed by a jury, as opposed to liquidated damages, the amount of which is specified as payable on the breach of the contract. It is an elementary principle of the law that in no case can unliquidated damages be claimed as a set-off, but must form the subject of a separate action. A state of affairs, however, which often arises in practice, has formed the subject of numerous cases, and approaches nearly to claiming a set-off of unliquidated damages, as to verge very closely upon a conflict with the principle above named. These cases arise where a man has agreed to sell to another a chattel, and in fulfillment of the stipulation gives or does something of the genus of what he has stipulated to give or to do, but not of the species, as, for example, a man may sell a steam engine of a certain construction, but not of the horse-power stipulated for, or as in the *Parana* case, according to the defendant's statement of it, he may let a steamer on hire, but not of the stipulated speed. In cases of this latter kind, it is, with two exceptions—those of freight and an attorney's bill—competent to put in issue the inferiority of the thing supplied in reduction of the sum claimed. It is obvious that this runs very closely upon an invasion of the principle as to unliquidated damages; but it is probable that the courts have been influenced in some measure by the obvious convenience of the practice, in bringing the whole case before the Court and Jury. There is, however, this very clear distinction between the two classes of cases, that a case is one of setting-off unliquidated damages where the damage claimed for is something consequent on the defect in the thing supplied, and the case is not one of setting off unliquidated damages, where the reduction is demanded because of a defect in the thing itself, or, in legal parlance, the non-performance of a warranty or condition precedent, without which the contract is not fulfilled.

But for the peculiar exception of freight from cases where a reduction can be claimed upon these last grounds, as above noticed, it is clear that, at the very least, a question would have at once arisen as to whether in the case of WILKINSON v. NORTON, the defendants could not claim that the case was within the category of those where a reduction may be asked for, consequent on the defectiveness of the thing delivered; but the exception as to freight complicated matters, so far as at first sight to make it appear that even this could not be done.

But the real fact is that though the charter-money is loosely called freight, it is not, either as a matter of fact or of law, really freight. As a matter of fact, every mercantile man knows the difference between charter-money and freight, the one being money paid for the hire or leasing of a vessel, the other money to be paid on the carriage of goods; and this obvious distinction of fact is fully recognised by the law—the distinctive characteristic of freight being that it is only earned by the completion of the carriage of the goods. By a looseness of diction, charter-money and freight are often spoken of under the general term of freight, but the difference between them is fully recognised by the law in a variety of directions. Thus, in the "Arnold's Marine Insurance," we find it stated: "The word freight, in policies of insurance, means either freight properly so called, that is the sum paid to the shipowner for the transport of goods in his ship, or the price agreed to be paid by charter-party for the hire of the ship, which is, strictly speaking, rather to be called 'charter-money' than 'freight'." Upon this a variety of interesting distinctions are detailed where the specialties attaching to freight properly speaking are shown not to apply to charter-money, although it is often called freight.

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Extracts.

VISIONS OF NIGHT.

There are mystical sounds in the air to-night; there are whispers soft and low; they are voices of love from the realms of light. In rapturous tones to me recite the music of Long Ago.

Tis a loving sister whose face I see, And her living visage I hear; In love again she looks on me As it days of old, though I know that she hath gone on other sphere.

There is one I loved with a deeper love Than a brother's or a friend's; Among the noble, true and brave, On the battle-field he found a grave.

And a soldier's transient fame.

And a sainted mother is looking down On her weak and wayward son; And although I travel 'tis my journey alone, I feel that around me ever is thrown The love of that holy one.

Above me is heading another face, Framed in the golden hair.

On the ocean she sailed alone, Into the sea of the great unknown.

Oh, life was cold and bare!

All sweet are the sounds I hear to-night, Murmuring soft and low;

Voices of love from the realms of light, That in rapturous tones to me recite The music of Long Ago.

TRAVELLING.

I wish folks in general would keep their eyes a little more open when they travel by rail. When I see young people rolling along in a luxurious carriage, their eyes and their brains absorbed probably in a trashy chit-chat, I am struck by the mort-al-intimation exercised by the mere existence of relatives prevents a man from following his own bent, and so sacrifices his happiness on the barren and lugubrious altar of family pride. —From "Very Human," by Alfred Butte Richards.

THE VALUE OF RELATIVES.

There is no body or class of persons in the world about whose approval or good opinion a man need care so little as that of his own relations, except, perhaps, those of his wife. If he is prosperous, he does not want them, although they may him, which does not prevent, thought it may conceal and check all the envy and malice which his prosperity, especially if coupled with merit, inspires to pre-eminently in their breasts. If he is ready, their mildest form of malignity and disgust is to discern him entirely, and to ignore his existence. If he is winning fame, they speak of him with derision and contempt; if he has won it they are the last to yield to what "all the world" has said. If you are eccentric, a relation takes out a statute of lunacy against you. If you don't require it, he sends you baskets of fruit; if you are in trouble, he disowns you, and furnishes the public with the history of your early indiscretions and bad traits. He is a perpetual witness against your character, and if you have cut him all your life, he intrudes himself at your funeral, if he deems it to propriety, or imagines you have anything to leave. And frequently the mortal-intimation exercised by the mere existence of relatives prevents a man from following his own bent, and so sacrifices his happiness on the barren and lugubrious altar of family pride. —From "Very Human," by Alfred Butte Richards.

ELECTRICITY.

Many are the marvellous freaks and jets played by electricity, sometimes ending in tragedy. Among the most remarkable is that of striking a person dead, and leaving him in the exact position occupied at the moment the shock was given, just as if he were still alive, and yet so thoroughly consumed as to be nothing but a mass of cinders. Thus, we are told, at Vic-sur-Aisne, France, in 1838, three soldiers sought refuge from a violent thunder storm under a leaning tree. Some peasants, seeing them stand motionless long after the storm had passed, and receiving no response to a pleasant salutation, touched them on the shoulder. The bodies instantly crumpled to fine ashes; yet the moment before there was no evidence that the lightning had touched them. Their clothing was not torn, and their faces were a natural appearance. The following remarkable circumstance was witnessed by Pastor Butler. On the 27th of July, 1861, ten harvesters took refuge under a hedge on the approach of a thunder storm. The lightning struck and killed four of them, who remained as it suddenly petrified. One of them was just putting a bit of tobacco in his mouth, another was fondling a little dog on his knee with one hand and feeding him with the other. M. Cardan relates that eight harvesters, taking their noonday repast under a maple tree during a thunder storm, were killed by one stroke of lightning. When approached by their companions, after the storm had cleared away, they seemed to be still at their repast. One was raising a glass to drink, another was at the act of biting a bit of bread, a third was reaching out his hand to a plate. There they sat as if petrified, in the exact position in which death surprised them. The following harmless freak of electricity is recorded by Flaman. On the 10th of September, 1845, during a violent thunder storm, a house in the village of Salagene, France, was struck by lightning. A large ball of fire descended the chimney, and rolled across the floor of a room in which sat a child and three women. No one was hurt. It then rolled out through the centre of the kitchen, passing close to the feet of a young peasant, and disappeared through a crevice in the wall. Its erratic course ended in the pigsty, the harmless occupant of which is despotically slow, with out setting on his the straw on which the creature lay. —Harper's New Monthly Magazine.

INSURANCES.

LONDON AND ORIENTAL STEAM TRANSPORT INSURANCE OFFICE, 137, LEADENHALL STREET, LONDON. ESTABLISHED 1853. AGENTS.—Authorized to accept premiums of this Office, by First Class Steamers and Sailing Ships. —A. MCIVER, Agent, Hongkong, 1st July, 1867.

PHOENIX FIRE INSURANCE COMPANY.

THE Undersigned having been appointed Agents to the above Company at this Port, are prepared to grant Policies against Fire to the extent of \$40,000, on Buildings, or on Goods stored therein. —DOUGLAS LAPRAIR, & Co., Agents, 1192 Hongkong, 27th June, 1872.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY.

FROM this date, until further notice, a discount of Twenty per cent. (20%) upon the current local rates of premium will be allowed upon insurances effected with this Company. —DOUGLAS LAPRAIR, & Co., Agents, 1192 Hongkong, 27th June, 1872.

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